

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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IN RE: WESTERN STATES
WHOLESALE NATURAL GAS
ANTITRUST LITIGATION

MDL 1566
2:03-CV-01431-PMP-PAL
BASE FILE

HEARTLAND REGIONAL MEDICAL
CENTER, et al.,

2:07-CV-00987-PMP-PAL

Plaintiffs,

v.

ORDER RE: PLAINTIFFS' MOTION
TO RECONSIDER (Doc. #1577)

ONEOK, INC., et al.,

Defendants.

Presently before this Court is Plaintiffs' Motion for Reconsideration of the Court's Order Filed March 6, 2009 Dismissing Defendants American Electric Power Company, Inc. and AEP Energy Services, Inc. for Lack of Personal Jurisdiction, or, in the Alternative, Plaintiffs' Motion to Transfer (Doc. #1577), filed on April 6, 2009. Defendants filed an Opposition (Doc. #1604) on April 24, 2009. Plaintiffs filed a Reply (Doc. #1622) on May 8, 2009.

I. BACKGROUND

The parties are familiar with the factual background of the case and the Court will not repeat the facts here except where necessary. Defendants American Electric Power Company, Inc. ("AEP") and AEP Energy Services, Inc. ("AEPES") previously moved to dismiss, arguing this Court lacks personal jurisdiction over them. The Court granted that motion. (Order (Doc. #1545).)

1 Plaintiffs now move the Court to reconsider. Plaintiffs contend they have
2 uncovered evidence that AEPES reported the sales it made to Missouri-based entities to the
3 price reporting index Inside FERC. Plaintiffs contend that because the price they paid for
4 natural gas was pegged to Inside FERC, Defendants' false reporting of sales to Missouri-
5 based entities suffices to show Plaintiffs' claims arise out of Defendants' Missouri-related
6 contacts. Additionally, Plaintiffs argue the Court erroneously applied the "but for" prong of
7 the specific personal jurisdiction test in the conspiracy context because it failed to consider
8 that Defendants' forum-related contacts increased the harm to Plaintiffs. Plaintiffs contend
9 that AEP is subject to jurisdiction in Missouri because of its relationship with AEPES.
10 Finally, Plaintiffs request the Court transfer the action to Ohio if the Court declines
11 reconsideration.

12 Defendants respond that the price reporting information is not "new," as the
13 evidence which Plaintiffs rely upon has been available to Plaintiffs since August 2008 and
14 was in Plaintiffs' possession prior to the time they filed their surreply. Defendants also
15 contend that the allegedly false price reports occurred in Ohio, not Missouri, and thus this
16 new evidence does not support the exercise of personal jurisdiction over Defendants. As to
17 the Court's application of the "but for" test, Defendants argue that the Court already
18 considered and rejected Plaintiffs' arguments and therefore there is no basis for
19 reconsideration. Defendants further contend that AEPES never availed itself of Missouri
20 law and did not expressly aim its conduct at a known forum resident plaintiff. Defendants
21 lastly assert that transfer is not appropriate because the Court already has dismissed
22 Defendants and Plaintiffs previously indicated they did not want Ohio as a forum.

23 **II. DISCUSSION**

24 Reconsideration of a prior ruling is appropriate only in limited circumstances,
25 such as the discovery of new evidence, an intervening change in controlling law, or where
26 the initial decision was clearly erroneous or manifestly unjust. Nunes v. Ashcroft, 375 F.3d

1 805, 807-08 (9th Cir. 2004). “A motion for reconsideration is not an avenue to re-litigate
2 the same issues and arguments upon which the court already has ruled.” Western Shoshone
3 Nat’l Council v. United States, 408 F. Supp. 2d 1040, 1053 (D. Nev. 2005).

4 **A. New Information**

5 Plaintiffs’ new information consists of evidence that Defendants made false price
6 reports to Inside FERC based on the sales of natural gas to Missouri-based entities. The
7 information presented is not “new,” however. Defendants made the information available
8 to Plaintiffs as of August 2008. (Status Report (Doc. #1304) at 8.) Moreover, Plaintiffs
9 concede they had the information in their possession on December 23, 2008. (Decl. of
10 Andrew J. Ennis (Doc. #1578) at 2.) Plaintiffs filed a motion for leave to file a surreply
11 (Doc. #1506) on February 6, 2009, but did not seek to bring the new evidence to the Court’s
12 attention. The Court did not issue its Order (Doc. #1545) until March 6, 2009. The Court
13 will deny the motion to reconsider based on the “new” information because this evidence
14 was not previously unknown to Plaintiffs or unavailable during the briefing of the personal
15 jurisdiction issue. Frederick S. Wyle Prof’l Corp. v. Texaco, Inc., 764 F.2d 604, 609 (9th
16 Cir. 1985) (party moving for reconsideration must show “evidence was newly discovered or
17 unknown to it” and that the moving party “could not with reasonable diligence have
18 discovered and produced such evidence”).

19 **B. Personal Jurisdiction**

20 The Court incorporates its statement of law relating to personal jurisdiction from
21 its prior Order (Doc. #1548). Plaintiffs’ reconsideration motion is directed at this Court’s
22 application of the second prong of the specific jurisdiction test, which provides that the
23 plaintiff’s claim must arise out of or result from the defendant’s forum-related activities.
24 See Pebble Beach Co. v. Caddy, 453 F.3d 1151, 1155 (9th Cir. 2006). Plaintiffs contend
25 the Court’s “but for” analysis did not consider the fact that multiple defendants could cause
26 Plaintiffs’ harm, yet no single Defendants’ act would be the sole “but for” cause of

1 Plaintiffs' injuries. Defendants respond that the Court properly applied the "but for" test.

2 As a general proposition, Plaintiffs are correct that if their claim arises from the
3 forum-related acts of multiple defendants, each defendant may be subject to specific
4 personal jurisdiction in the forum. However, Plaintiffs' reliance on Wilden Pump &
5 Engineering Co. v. Versa-Matic Tool Inc. is misplaced because Wilden is a straightforward
6 application of the "but for" test even though the Wilden court expressed otherwise. No. 91-
7 1562 SVW (SX), 1991 WL 280844, *4 (C.D. Cal. 1991) (unpublished). The defendant in
8 Wilden manufactured allegedly patent-infringing products in Pennsylvania. Id. The
9 defendant also solicited distributors in California, resulting in sales of the allegedly
10 infringing product to California distributors. Id. As the Wilden court acknowledged, a
11 patent infringement claim arises every time an infringing product is manufactured, used, or
12 sold. Id. Consequently, but for the sales to California distributors, the plaintiff's claim as
13 to each act of infringement related to those sales would not have arisen. The exercise of
14 personal jurisdiction in California therefore was appropriate.

15 Here, had Plaintiffs been able to present evidence that they purchased natural gas
16 from AEPES, the Court could exercise personal jurisdiction over AEPES even if other
17 Defendants also had sold natural gas to Plaintiffs at allegedly manipulated prices. As in
18 Wilden, in such circumstances, but for each of Defendants' forum-related acts, Plaintiffs'
19 claims would not have arisen, either at all or to the same extent.

20 However, not any forum-related act in furtherance of a conspiracy will suffice to
21 support specific personal jurisdiction, as it cannot be said that a particular plaintiff's claim
22 would not have arisen but for each and every act in furtherance of a conspiracy. Rather, the
23 "but for" test requires that Defendants' forum-related acts be acts out of which Plaintiffs'
24 claims arise, or, stated alternatively, Plaintiffs' claims would not have arisen in the absence
25 of Defendants' forum-related acts. That is why this Court stated in its prior Order that
26 regardless of the sales AEPES made in Missouri to unrelated third parties, Plaintiffs still

1 would have been harmed in their own transactions with other Defendants. In other words,
2 Plaintiffs' claims do not arise from these forum-related contacts because irrespective of
3 whether AEPES made a hundred sales to unrelated third parties in Missouri or no sales to
4 unrelated third parties in Missouri, Plaintiffs' claims in this action would be precisely the
5 same in both character and scope. Although Plaintiffs state that AEPES's sales to Missouri-
6 based Aquila increased the harm to Plaintiffs, Plaintiffs presented nothing to support this
7 conclusory assertion. The Court therefore will deny reconsideration of its prior ruling
8 regarding personal jurisdiction. Plaintiffs' claims in this action do not arise "but for"
9 Defendants' forum-related contacts.

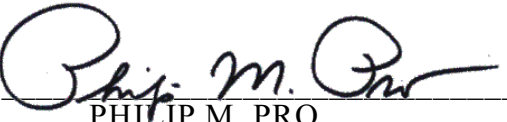
10 C. Transfer

11 Plaintiffs' alternatively request the Court transfer this action to Ohio. This Court
12 previously has explained why transfer is not an available option. The Court adopts its
13 reasoning expressed in the Court's June 4, 2010 Order (Doc. #1946).

14 III. CONCLUSION

15 IT IS THEREFORE ORDERED that Plaintiffs' Motion for Reconsideration of
16 the Court's Order Filed March 6, 2009 Dismissing Defendants American Electric Power
17 Company, Inc. and AEP Energy Services, Inc. for Lack of Personal Jurisdiction, or, in the
18 Alternative, Plaintiffs' Motion to Transfer (Doc. #1577) is hereby DENIED.

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20 DATED: October 29, 2010

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23 PHILIP M. PRO
24 United States District Judge
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